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**IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA**

SUSAN CHARALAMBOUS, an
 Individual;

PLAINTIFF

v.

CITY OF BURBANK; OFFICER
 MIRAKYAN, an Individual; OFFICER
 CAITO, an Individual; DOES 1 through
 10, inclusive,

DEFENDANTS

No.

COMPLAINT FOR DAMAGES

1. Violation of Civil Rights Under 42 U.S.C. § 1983 – 4th Amendment Unlawful Arrest
2. Violation of Civil Rights Under 42 U.S.C. § 1983 – First Amendment
3. Violation of Civil Rights Under 42 U.S.C. § 1983 – Supervisory Liability
4. Violation of Civil Rights Under 42 U.S.C. § 1983 – Monell Liability

Plaintiff allege as follows:

JURISDICTION AND VENUE

1. Jurisdiction is conferred upon the United States District Court for the Central District of California, as Plaintiffs assert claims herein that are derived from the

1 United States Constitution and the laws of the United States, the amount in
2 controversy exceeds \$75,000, and the events that give rise to litigation occurred in
3 and around the County of Los Angeles. This Honorable Court therefore has
4 jurisdiction over this action pursuant to 28 U.S.C. § 1331.
5

6
7 **PARTIES**

8 2. Plaintiff SUSAN CHARALAMBOUS (hereinafter “Plaintiff” or
9 “CHARALAMBOUS”) is an individual, competent adult, who, during all times
10 relevant as described in more detail below, was a resident and citizen of the City of
11 Burbank, California, who owned and lived in the residential property located at or
12 near 434 North Lamer Street, Burbank, California 91506. Plaintiff was born in 1950
13 and was approximately 64 years old at the time of the incidents that give rise to this
14 lawsuit, as alleged further herein.
15

16
17 3. Defendant CITY OF BURBANK is a local public entity organized under the
18 laws of the State of California (hereinafter referred to as “CITY OF BURBANK” or
19 “COB”). The Burbank Police Department (hereinafter referred to as “BPD” or “the
20 Department”) is an agency of Defendant CITY OF BURBANK responsible for the
21 enforcement of laws as well as for investigation of alleged criminal activity within the
22 jurisdiction of Defendant CITY OF BURBANK. BPD, as well as its employees and
23 agents, operates under the policy direction of Defendant CITY OF BURBANK,
24 including but not necessarily limited to the Burbank City Council.
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1 4. At all times relevant, herein, Defendant CITY OF BURBANK was and is
2 responsible for the hiring, supervision, training, and discipline of law enforcement
3 officers retained, employed, or otherwise authorized to act as law enforcement
4 officers on behalf of the BPD. Defendant CITY OF BURBANK is responsible for
5 maintaining policies, procedures, and practices with respect to such hiring,
6 supervision, training and/or discipline that comports with the laws of the United
7 States and the State of California, including but not limited to laws relating to lawful
8 detention, probable cause to engage in a lawful arrest, and abuse of authority.
9

10 5. At all times relevant herein, Officer MIRAKYAN (hereinafter referred to as
11 “MIRAKYAN”) is and was a police officer employed by Defendant CITY OF
12 BURBANK, by and through the BPD, assigned the serial number 12714, and charged
13 with the investigation of potential criminal incidents as part of his professional duties
14 as a law enforcement officer. On information and belief, at all relevant times
15 Defendant MIRAKYAN was and is a resident of the County of Los Angeles.
16 Defendant MIRAKYAN is sued herein in his individual capacity.
17
18

19 6. At all times relevant herein, Officer CAITO (hereinafter referred to as
20 “CAITO”) is and was a police officer employed by Defendant CITY OF BURBANK,
21 by and through the BPD, assigned the serial number 11403, and charged with the
22 investigation of potential criminal incidents as part of his professional duties as a law
23 enforcement officer. On information and belief, at all relevant times Defendant
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1 CAITO was and is a resident of the County of Los Angeles. Defendant CAITO is
2 sued herein in his individual capacity.
3

4 7. Plaintiff is informed and believes and thereon allege that Defendants, Does 1
5 through 10, inclusive (hereinafter referred to as “Does”), are now and at all times
6 herein mentioned in this Complaint were individuals and residents or were entities –
7 either governmental or otherwise – operating and/or doing business in and around the
8 County of Los Angeles, State of California, and were in some manner employed by
9 and acting within the scope of their employment on behalf of Defendant CITY OF
10 BURBANK, whether by and through the BPD or some other means, and in some way
11 engaged in affirmative acts or omissions that were a direct and/or proximate cause of
12 the violation of Plaintiff’s rights as alleged in more detail herein.
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15

16 8. At all times relevant herein, Defendant DOE 1 is and was a police officer
17 employed by Defendant CITY OF BURBANK, by and through the BPD, who served
18 as a supervisor to Defendants MIRAKYAN and CAITO, as well as other officers,
19 during the events alleged herein. Defendant DOE 1 was responsible for the
20 supervision, training, and disciplining of individual officers, including but not
21 necessarily limited to Defendants MIRAKYAN and CAITO. On information and
22 belief, at all relevant times Defendant DOE 1 was and is a resident of the County of
23 Los Angeles. Defendant DOE 1 is sued herein in his individual capacity.
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1 9. At all times alleged herein, Defendant CITY OF BURBANK had the power,
2 right, and duty to control the manner in which the individual defendants carried out
3 the objectives of their employment and to assure that all orders, rules, instructions,
4 and regulations promulgated were consistent with the United States Constitution, the
5 California Constitution, the laws of the United States, the laws of the State of
6 California, and the laws of local municipalities.

7
8
9 10. Plaintiff is ignorant of the true names and capacities of these Doe Defendants,
10 though all are believed to have been employed by Defendant CITY OF BURBANK,
11 or acting in concert with other named defendants and in their capacity were acting as
12 state actors, but alleges that each such defendant was in some intentional or negligent
13 manner responsible for the injuries suffered by Plaintiff.
14

15 11. Defendants, and each of them, performed the wrongful acts and omissions
16 alleged herein in bad faith and with knowledge that their conduct violated well and
17 clearly established and settled law.
18

19 12. At all times material herein, defendants, and each of them, were acting as the
20 employees, agents, representatives, and officers of every other defendant herein, and
21 within the course and scope of such employment and agency.
22

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FACTS COMMON TO ALL CLAIMS

13. Each and every allegation set forth in each and every averment of this Complaint is hereby incorporated by this reference in each and every other averment, allegation, and count of this Complaint.

14. Plaintiff was previously deprived of her interests protected by the Constitution and/or laws of the United States of America, as well as California, and suffered injuries to her person, and such deprivation was caused by defendants – by commission and omission – while defendants acted under color of law.

15. All acts and/or omissions perpetrated by each defendant, except any governmental entity defendant or any defendant only in their official capacity, were engaged in maliciously, callously, oppressively, wantonly, recklessly, and with deliberate indifference to the rights of Plaintiff, and were done so despicably and with evil motive and/or intent., and demonstrate a callous disregard for Plaintiff and her basic constitutional rights.

16. Plaintiff, who resides at 434 North Lamer Street, Burbank, California 91506, lives near a private citizen, known to Plaintiff as Jacquelynn Perske (hereinafter “Ms. Perske”), who on information and belief is a long-time neighbor and resident on the same street as Plaintiff.

17. Previous to June 10, 2015, Ms. Perske repeatedly harassed Plaintiff by confronting Plaintiff – either in person or through an intermediary – leaving notes at

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1 Plaintiff's residence, or contacting Defendant CITY OF BURBANK, by and through
2 the BPD, to assert frivolous complaints against Plaintiff. Plaintiff understands that
3
4 Ms. Perske has engaged in such actions out of a specific dislike for the fact that
5 Plaintiff lawfully rents out part of her residence to foreign students attending
6 educational programs in and around the Burbank area. At no point prior to June 10,
7
8 2015 did any of the numerous complaints by Ms. Perske result in Plaintiff receiving
9 any sort of citation, detention, arrest, or prosecution for any sort of alleged crime.

10
11 18. On or about June 10, 2015, at approximately 10:10 p.m., Plaintiff was engaged
12 in a telephone call with a friend while inside of her home on North Lamer Street.

13
14 19. Because of difficulties with reception while using her cellphone inside her
15 residence, Plaintiff stepped outside to her front porch in an effort to get better
16 reception and continue with her phone conversation.

17
18 20. At approximately 10:20 p.m., while still on the phone call with a friend,
19 Plaintiff noticed a police car pulling up to her residence. Plaintiff asked her friend to
20 hold while Plaintiff approached the police officer who had exited the police vehicle
21 and appeared to be walking towards Plaintiff.

22
23 21. The individual officer – who Plaintiff later understood to be Defendant
24 MIRAKYAN– met with Plaintiff and informed Plaintiff that he was called out to
25 Plaintiff's residence on a report that Plaintiff was in violation of California Penal
26 Code § 415, disturbing the peace.
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22. A violation of § 415 of the California Penal Code for “disturbing the peace” occurs when an individual does one of the following:

- (a) Unlawfully fighting in a public place or challenging another to the same;
- (b) Maliciously and willfully disturbing another person by loud or unreasonable noise; or
- (c) Using offensive words in a public place which are inherently likely to provoke an immediate violent reaction.

23. At no point did Plaintiff engage in any sort of physical fight, nor did Plaintiff challenge any other individual to a fight in a public place, within the meaning of Cal. Pen. Code § 415(1).

24. At no point did Plaintiff “maliciously and willfully” disturb another person using unreasonable noise, within the meaning of Cal. Pen. Code § 415(2).

25. At no point did Plaintiff use “offensive words” in a public place that were inherently likely to provoke an immediate violent reaction, within the meaning of Cal. Pen. Code § 415(3).

26. Pursuant to established precedent by the United States Supreme Court, a violation of Cal. Pen. Code § 415 for maliciously and willfully disturbing others with loud or unreasonable noise comports with the First Amendment right to freedom of speech only if such “noise” is made “in a loud manner only when there is a clear and present danger of violence or when the communication is not intended as such but is

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1 merely a guise to disturb persons.” In re Brown, 9 Cal.3d 612, 619 (1973); citing to
2 Edwards v. South Carolina, 372 U.S. 229, 235-238 (1963), and Cox v. Louisiana, 379
3 U.S. 536, 546-550 (1965); see also Collins v. Jordan, 110 F.3d 136 (1996); accord,
4 Rosenbaum v. City & County of San Francisco, 484 F.3d 1142 (9th Cir. 2007)
5 (holding that citation for Cal. Pen. Code § 415 was proper where demonstrators acted
6 with a specific intent to annoy rather than engage in protected speech). The scope of
7 the First Amendment as it applies to investigation and enforcement of Cal. Pen. Code
8 § 415 – and the unconstitutionality of relying on the statute to arrest or cite
9 individuals who were not engaging in conduct that created a “clear and present
10 danger of violence” or “as a guise to disturb persons” – was reasonably established at
11 the time that Defendants came to Plaintiff’s residence in the late evening of June 10,
12 2015.
13
14
15
16

17 27. In response to the acknowledgement that Defendant MIRAKYAN was
18 investigating a call for violation of disturbing the peace, Plaintiff politely responded
19 that she was on her property and was engaged in a personal phone call with a friend.
20
21

22 28. In response, Defendants MIRAKYAN asserted to Plaintiff that “she said she
23 can hear you.”
24

25 29. At this point, Plaintiff reasonably understood that Defendant MIRAKYAN was
26 referring to Ms. Perske, the neighbor that had harassed Plaintiff previously.
27
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1 30. Plaintiff responded to Defendant MIRAKYAN that she had not received any
2 complaints from neighbors, no request to keep her voice down, or any other good
3 faith communication that Plaintiff's decision to continue her phone conversation
4 outside – on her own property – was harming any of her neighbors.
5

6 31. In response, Defendant MIRAKYAN stated, "I agree. I do not observe any
7 disturbance of peace."
8

9 32. Plaintiff then inquired politely as to why the defendant officers were at her
10 residence if there was no sign that she was disturbing the peace. Defendants
11 responded that they are obligated to "come by" when there is a call alleging a crime
12 has been committed.
13

14 33. Plaintiff continued to speak cooperatively with Defendant MIRAKYAN, who
15 continued to confirm that he did not observe Plaintiff engaging in any actions that
16 constituted a violation of Cal. Pen. Code § 415.
17

18 34. During the conversation, Defendants MIRAKYAN asked Plaintiff if she could
19 use her cellphone in her house. Plaintiff acknowledged that had difficulty with
20 reception in her home, and asked if she had a right to step outside onto her porch and
21 into her yard to continue a phone conversation. Defendant MIRAKYAN conceded
22 that Plaintiff did have a right to do so.
23

24 35. During the conversation, another police officer, who Plaintiff later understood
25 to be Defendant CAITO, approached Plaintiff. Defendant CAITO stated to Plaintiff
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1 that “she” – who Plaintiff understood to be Ms. Perske – complained that she could
2 hear Plaintiff’s phone conversation.

3
4 36. Plaintiff responded to Defendant CAITO by stating that she was willing to
5 “tone it down” but asked that the police officers speak to Ms. Perske, because
6 Plaintiff did not believe that Ms. Perske could dictate where on Plaintiff’s own
7 property Plaintiff could engage in lawful activities, such as speaking on a phone.

8
9 37. Shortly thereafter, Defendants MIRAKYAN and CAITO walked across the
10 street to the residential property located at or near 433 North Lamer Street, Burbank,
11 California 91506, which Plaintiff understood to be the residence of Ms. Perske, and
12 left Plaintiff alone in her front yard.

13
14 38. While Defendants MIRAKYAN and CAITO apparently spoke with Ms. Perske,
15 Plaintiff finished her telephone conversation in her yard and began to make her way
16 back into her residence.

17
18 39. At approximately 10:30 p.m., as Plaintiff was entering her home, Plaintiff
19 observed another police vehicle pulling up to her residence. As a result, Plaintiff
20 turned around and waited in the front of her property based on the reasonable concern
21 that she needed to speak further with law enforcement until the matter was resolved.

22
23 40. Defendants MIRAKYAN and CAITO approached Plaintiff from across the
24 street and began talking to Plaintiff about having her go inside her house. Plaintiff
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1 responded by stating that she already finished her telephone conversation and was
2 going into her house until she saw additional law enforcement arrive.
3

4 41. During this second conversation with Defendants MIRAKYAN and CAITO,
5 Plaintiff noticed three additional police vehicles arrive on her street, bringing the total
6 number to six (6).
7

8 42. Plaintiff pointed out to Defendants MIRAKYAN and CAITO that multiple
9 additional police vehicles had arrived, and Defendants acknowledged that “a police
10 supervisor” had come to the scene.
11

12 43. Plaintiff, who now was becoming very concerned that the officers were still
13 investigating her despite admitting – repeatedly – that Plaintiff had a right to be on
14 her property and use her cellular phone in her yard, asked why a police supervisor had
15 driven out to her property. Defendants MIRAKYAN and CAITO simply
16 acknowledged that the supervisor is required to “show up when someone calls.”
17
18

19 44. Plaintiff expressed her concern about the ability of a private citizen – namely,
20 Ms. Perske – to cause such a great police presence to investigate an elderly woman
21 who was not engaging in any illegal activity and asked if the use of police resources
22 was reasonable given that no crime had been committed.
23

24 45. Plaintiff then waited in her driveway, concerned that she should not go into her
25 home until a police officer confirmed that they were finished.
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1 46. A few minutes later, six (6) police officers – including but in no way limited to
2 Defendants MIRAKYAN and CAITO – surrounded Plaintiff and forcibly handcuffed
3 her arms behind her back.
4

5 47. Plaintiff then pointedly asked why she was being handcuffed since Defendants
6 MIRAKYAN and CAITO explicitly assured Plaintiff that her actions did not
7 constitute a violation of Cal. Pen. Code § 415. Defendants MIRAKYAN and CAITO
8 did not respond, nor did they look at Plaintiff while she asked them directly to explain
9 the basis for her arrest.
10

11 48. Plaintiff, who was barefoot, then begged the police officers to allow her to have
12 her shoes if she was to be taken into custody. One officer went into her home to find
13 shoes but returned and stated that Plaintiff could not have shoes because the ones the
14 officer found had heels, which he represented were not allowed.
15

16 49. At one point, a police officer who identified himself as a supervisor – and who
17 is identified herein as DOE 1 – spoke directly with Plaintiff at the scene after Plaintiff
18 was placed under arrest. Plaintiff asked DOE 1 why she was being arrested since
19 Defendants MIRAKYAN and CAITO already confirmed that her actions did not
20 constitute a violation of Cal. Pen. Code § 415. DOE 1 responded only by stating that
21 the BPD received a call about disturbing the peace.
22

23 50. Plaintiff was then placed in the back of a police vehicle with her hands cuffed
24 and without shoes. Plaintiff complained to individual officers – including but not
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1 limited to the named defendants – that the handcuffs were too tight and were causing
2 her pain.
3

4 51. While inside the back of the police vehicle, Plaintiff witnessed the individual
5 defendants speak with Ms. Perske.
6

7 52. Approximately twenty minutes later, Plaintiff was taken to the Burbank Police
8 Station to be booked into custody by Defendants MIRAKYAN and CAITO.
9

10 53. At the time that the individual defendant officers investigated this incident and
11 arrested Plaintiff, Daniel Kay, a retired law enforcement officer who had been staying
12 at Plaintiff's residence for a few months, was in the residence. Mr. Kay was present
13 during Plaintiff's phone conversation – both in the residence and when Plaintiff
14 stepped outside to get better reception – and did not witness any actions by Plaintiff
15 that would constitute probable cause to justify the arrest.
16

17 54. At the time that the individual defendant officers investigated this incident and
18 arrested Plaintiff, Michael Bernard, an individual who had been staying at Plaintiff's
19 residence for several months, came back to the residence as Plaintiff continued her
20 phone call outside. Mr. Bernard was also present in the residence when a police
21 officer came to the door and inquired as to whether Plaintiff's shoes were readily
22 available since Plaintiff was being arrested while barefoot. Mr. Bernard offered the
23 officer a pair of shoes, but the officer declined them, stating that shoes with heels
24 were not allowed. At no point during the evening of June 10, 2015 did Mr. Bernard
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1 witness Plaintiff engaging in any activity that would constitute probable cause for a
2 violation of Cal. Pen. Code § 415.
3

4 55. Despite the presence of Mr. Bernard and Mr. Kay, none of the individual
5 defendants interviewed either person, which constitutes a failure to interview
6 witnesses as part of any alleged investigation into the alleged misconduct of Plaintiff.
7

8 56. On information and belief, such failure to interview witnesses constitutes a
9 violation of the internal practices and policies of the BPD.
10

11 57. While traveling to the Burbank Police Station, Plaintiff asked the Defendants
12 MIRAKYAN and CAITO why she was being arrested when she did nothing wrong.
13 The officers informally stated to Plaintiff that Plaintiff was arrested because she
14 would not go into her house.
15

16 58. Plaintiff responded that was not true, and that she waited outside of her
17 residence – while not talking on the phone – solely because of the large law
18 enforcement presence gathered in front of her property.
19

20 59. Defendants MIRAKYAN and CAITO then stated to Plaintiff that Plaintiff was
21 arrested because “[Ms. Perske] wanted to do a citizen’s arrest.” However, neither
22 Defendant MIRAKYAN nor Defendant CAITO explained why the alleged desire of
23 Plaintiff’s neighbor to engage in a citizen’s arrest necessitated Defendants making the
24 decision to formally arrest Plaintiff themselves.
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1 60. Plaintiff understands, and therefore on information and belief alleges, that
2 Defendants MIRAKYAN and CAITO made comments about Ms. Perske's desire to
3 engage in a "citizen's arrest" as an attempt to distance themselves from their own
4 actions and the actions of their fellow officers in arresting Plaintiff despite previously
5 admitting that Plaintiff was not engaged in any unlawful activity.
6

7
8 61. Defendants MIRAKYAN and CAITO transported Plaintiff to the Burbank
9 Police Station, where Plaintiff – who was barefoot, crying, and unable to comprehend
10 why Defendants arrested her despite admitting that Plaintiff was not engaging in any
11 illegal activity – was eventually booked and placed into a jail cell.
12

13 62. Once Plaintiff arrived at the Burbank Police Department, Defendant DOE 1 –
14 the supervisory officer at the scene of the incident – approached Plaintiff and assured
15 her that the booking process "won't take long" and that afterwards he and his fellow
16 officers would "go get the bad guys." Defendant DOE 1 then assured Plaintiff that
17 "you're not one [of the bad guys]."
18

19
20 63. When the defendants removed the handcuffs from Plaintiff's wrists, Plaintiff
21 noticed large red welts on her wrists, and pointed out to the defendants her injuries,
22 reminding the officers that she previously complained that the handcuffs were hurting
23 her.
24

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26 64. Plaintiff was then subjected to an invasive search of her person by three
27 separate officers. During the search, Plaintiff repeatedly asked that the officers take
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1 photographs of the welts on her wrists. The officers eventually complied and took
2 three photographs, which the officers then assured Plaintiff would be entered into
3 evidence.
4

5 65. Plaintiff spent the remainder of the night in the custody of the Burbank Police
6 Department as a result of her arrest by Defendants MIRAKYAN and CAITO.
7

8 66. At approximately 6:30 a.m. the following morning, Plaintiff was released from
9 custody and given a citation for Cal. Pen. Code § 415(1) for fighting in public with an
10 appearance date of July 2, 2015 at the Burbank Courthouse. The same charge was
11 explicitly listed on Plaintiff's booking and property record.
12

13 67. Upon reviewing the citation and other documents, Plaintiff stated that the
14 citation was incorrect, as Plaintiff was not engaged in any sort of public fight or
15 threatening the same.
16

17 68. Thereafter, Plaintiff met with Officer Meadows, who Plaintiff understood to be
18 a member of the BPD and who was in the police department at the time of her release.
19 Plaintiff spoke with Officer Meadows about the incident and requested that she be
20 allowed to make a complaint regarding the interaction between her neighbor and the
21 officers that led to her arrest.
22

23 69. Officer Meadows assured Plaintiff that he himself would prepare a formal
24 written complaint for Plaintiff, and attach it to the police report on behalf of Plaintiff.
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1 70. During their interaction, Officer Meadows assured Plaintiff that he had
2 reviewed the police reports prepared by Defendants MIRAKYAN and/or CAITO, and
3 that the officers “advised [Ms. Perske] not to do this, but she insisted she wanted to
4 do a citizen’s arrest.”
5

6 71. Plaintiff then asked Officer Meadows why Defendants MIRAKYAN and
7 CAITO engaged in the arrest if they did not believe there was a basis to do so. Officer
8 Meadows responded that the defendants “could be liable” if they did not arrest
9 Plaintiff per Ms. Perske’s wishes.
10

11 72. Plaintiff then asserted to Officer Meadows that the citation and related
12 documentation was wrong, because Plaintiff was not “fighting in public.” Officer
13 Meadows then edited the citation by hand to reflect “415(3) – disturbing the peace”
14 and initialed the change.
15

16 73. At approximately 7:30 a.m., Officer Meadows arranged for Plaintiff to be
17 escorted to St. Joseph’s Hospital by police transport. The police officer that drove
18 Plaintiff identified himself to Plaintiff as “Officer Angel.”
19

20 74. At approximately 7:45 a.m., Plaintiff arrived at the emergency room of St.
21 Joseph’s hospital. Plaintiff was diagnosed by a physician with shock and wrist sprain.
22

23 75. On or about July 2, 2015, Plaintiff went to the Burbank Courthouse for the
24 hearing on the citation issued by Defendants. After waiting for several hours, Plaintiff
25 received a “Proof of Appearance.” Plaintiff understands that the alleged violation of
26
27
28

1 Cal. Pen. Code § 415 was rejected by the prosecution, and no actual charges were
 2 ever filed against Plaintiff.
 3

4 76. The actions of Defendants, and each of them, were reckless, willful, malicious,
 5 and with a conscious disregard for the civil rights of Plaintiff. Such wrongful conduct
 6 necessarily entitles Plaintiff to seek punitive damages from individual Defendants'
 7 wrongful acts for the purpose of punishing said Defendants, to make an example out
 8 of them, and to discourage such misconduct in the future.
 9

FIRST CAUSE OF ACTION

42 U.S.C. § 1983 – 4th Amendment – Wrongful Arrest

Against Defendants MIRAKYAN, CAITO, and Doe Defendants 1-10

12 77. Plaintiff re-alleges, adopts and incorporates the preceding paragraphs as if fully
 13 set forth herein.
 14

15 78. At the time of the incidents as set forth in the averments above, the rights of
 16 persons within the jurisdiction of the United States of America under both
 17 Amendment IV and XIV to the United States Constitution to due process of law and
 18 the equal protection of the laws as well as the right to be free from unreasonable
 19 searches and seizures under the Fourth Amendment were in full force and effect, and
 20 the individual defendants who engaged in conduct, as set forth above, deprived
 21 Plaintiff of her constitutional rights, which violated those rights, and violated the
 22 Fourteenth Amendment to the United States Constitution.
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1 79. Under the Fourth Amendment, an individual within the jurisdiction of the
2 United States cannot be subjected to a warrantless arrest absent probable cause.
3 Probable cause exists only where the facts and circumstances within the officer's
4 knowledge are sufficient to warrant a prudent person, or one of reasonable caution to
5 believe, in the circumstances shown, that the suspect has committed, is committing,
6 or is about to commit an offense. United States v. Watson, 423 U.S. 411 (1976); see
7 also Michigan v. DeFillippo, 443 U.S. 31, 37 (1979).
8

9
10 80. As set forth elsewhere in this Complaint, the limited scope of Cal. Pen. Code §
11 415 as it relates to protected First Amendment Activity was clearly established at the
12 time of Plaintiff's arrest, such that a reasonably competent police officer should have
13 and would have known in the circumstances that Plaintiff – who was exercising her
14 right to engage in a cellular phone call with a friend on her property – was not in
15 violation of § 415.
16
17
18

19 81. Defendants MIRAKYAN and CAITO did not observe any activity that would
20 have caused a reasonably prudent officer to believe that Plaintiff was engaged in any
21 illegal activity – including but not limited to a violation of Cal. Pen. Code § 415.
22

23 82. Defendants MIRAKYAN and CAITO personally confirmed to Plaintiff that
24 they did not have probable cause to arrest Plaintiff for a violation of Cal. Pen. Code §
25 415, stating to Plaintiff multiple times that Plaintiff did not appear to be disturbing
26 the peace.
27
28

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1 83. Neither Defendants MIRAKYAN or CAITO were told anything by Ms. Perske
2 that would overcome the observations of the individual defendants that Plaintiff was
3 not engaged in any illegal activity.
4

5 84. Despite the established rights relating to free exercise and speech, Defendants
6 MIRAKYAN and CAITO, and others, unlawfully detained and arrested Plaintiff
7 without probable cause, which was in violation of Plaintiff's rights.
8

9 85. Defendants, and each of them, took these actions while acting under color of
10 law without reasonable probable cause and with deliberate indifference to Plaintiff's
11 constitutional rights. Defendants knew or should have known that such conduct
12 violated Plaintiff's constitutional rights, which were established at the time.
13

14 86. By these actions Defendants, and each of them, violated Plaintiff's rights under
15 the Fourth Amendment to be free from unlawful arrest.
16

17 87. As a direct and proximate result of the actions of the individual Defendants,
18 Plaintiff has suffered, and will continue to suffer, physical, mental and emotional
19 injury, all to an extent and in an amount subject to proof at trial. Plaintiffs have also
20 incurred, and will continue to incur, attorney fees, costs and expenses, including those
21 authorized by 42 U.S.C. § 1988, to an extent and in an amount subject to proof at
22 trial.
23

24 88. As a direct and proximate result of Defendants' actions as alleged herein,
25 Plaintiffs suffered general and special damages including but not limited to the loss of
26
27
28

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1 liberty, as well as physical, mental and emotional pain, shock, and suffering, in an
 2 amount according to proof at trial and consistent with 42 U.S.C. § 1983.
 3

4 89. In doing the things alleged herein, Defendants acted willfully and in conscious
 5 disregard for Plaintiff's rights, such that their actions shock the conscience of the
 6 average person, and constitute an abuse of power that was malicious and purposeful
 7 such that punitive damages are allowed under the law. Punitive damages are
 8 therefore sought against the individual defendants according to proof.
 9

10 **SECOND CAUSE OF ACTION**

11 **42 U.S.C. § 1983 – 1st Amendment – Freedom of Speech**

12 **Against Defendants MIRAKYAN and CAITO, and Doe Defendants 1-10**

13 90. Plaintiff re-alleges, adopts and incorporates the preceding paragraphs as if fully
 14 set forth herein.
 15

16 91. At the time of the incidents as set forth in the averments above, the rights of
 17 persons within the jurisdiction of the United States of America under both
 18 Amendment I and XIV to the United States Constitution to due process of law and the
 19 equal protection of the laws as well as the right to free speech under the First
 20 Amendment were in full force and effect, and the individual defendants who engaged
 21 in conduct, as set forth above, deprived Plaintiff of her constitutional rights, which
 22 violated those rights, and violated the Fourteenth Amendment to the United States
 23 Constitution.
 24
 25
 26
 27
 28

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1 92. Under the First Amendment, an individual within the jurisdiction of the United
2 States has a right to speak freely. This right, which was reasonably established at the
3 time of the events alleged in this Complaint, included the right to engage in telephone
4 communications on one's own residential property. This right also included the
5 narrow limits of Cal. Pen. Code § 415, including specifically the right to be free from
6 threat of arrest for engaging in speech that is neither related to a clear and present
7 danger of violence nor serving as a guise to disturb others.
8

9
10 93. As set forth elsewhere in this Complaint, both Defendants MIRAKYAN and
11 CAITO, as well as others, represented to Plaintiff that her actions did not constitute a
12 violation of Cal. Pen. Code § 415, yet Defendants arrested Plaintiff anyway.
13

14 94. Defendants MIRAKYAN and CAITO did not observe any activity that would
15 have caused a reasonably prudent officer to believe that Plaintiff was engaged in any
16 illegal activity – including but not limited to a violation of Cal. Pen. Code § 415.
17

18 Instead, Defendants MIRAKYAN and CAITO – as well as other members of the BPD
19 – merely observed Plaintiff engaging in constitutionally protected speech by using her
20 cellular phone while in her yard.
21

22 95. Defendants MIRAKYAN and CAITO personally confirmed to Plaintiff that
23 they did not have probable cause to arrest Plaintiff for a violation of Cal. Pen. Code §
24 415, stating to Plaintiff multiple times that Plaintiff did not appear to be disturbing
25
26
27
28

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1 the peace, yet arrested her for engaging in constitutionally protected speech despite
2 such assurances.

3
4 96. Neither Defendants MIRAKYAN or CAITO were told anything by Ms. Perske
5 that would overcome the observations of the individual defendants that Plaintiff was
6 engaged in constitutionally protected speech.

7
8 97. Despite the established rights relating to free exercise and speech, Defendants
9 MIRAKYAN and CAITO, and others, unlawfully detained and arrested Plaintiff for
10 engaging in her constitutionally protected right to free speech.

11
12 98. Defendants, and each of them, took these actions while acting under color of
13 law without reasonable probable cause and with deliberate indifference to Plaintiff's
14 constitutional rights. Defendants knew or should have known that such conduct
15 violated Plaintiff's constitutional rights, which were established at the time.

16
17 99. By these actions Defendants, and each of them, violated Plaintiff's rights under
18 the First Amendment.

19
20 100. As a direct and proximate result of the actions of the individual Defendants,
21 Plaintiff has suffered, and will continue to suffer, physical, mental and emotional
22 injury, all to an extent and in an amount subject to proof at trial. Plaintiffs have also
23 incurred, and will continue to incur, attorney fees, costs and expenses, including those
24 authorized by 42 U.S.C. § 1988, to an extent and in an amount subject to proof at
25 trial.
26
27
28

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101. As a direct and proximate result of Defendants' actions as alleged herein, Plaintiffs suffered general and special damages including but not limited to the loss of liberty, as well as physical, mental and emotional pain, shock, and suffering, in an amount according to proof at trial and consistent with 42 U.S.C. § 1983.

102. In doing the things alleged herein, Defendants acted willfully and in conscious disregard for Plaintiff's rights, such that their actions shock the conscience of the average person, and constitute an abuse of power that was malicious and purposeful such that punitive damages are allowed under the law. Punitive damages are therefore sought against the individual defendants according to proof.

THIRD CAUSE OF ACTION

42 U.S.C. § 1983 – Supervisory Liability

Against DOE 1 and Doe Defendants 2-10

103. Plaintiff re-alleges, adopts, and incorporates the preceding paragraphs as if fully set forth herein.

104. Defendant DOE 1, identified herein as a supervisory defendant, was personally involved in the investigation of events occurring at or near Plaintiff's residence on the evening of June 10, 2015, directly conferred with subordinate officers throughout the investigation, and was personally involved in the decision to arrest Plaintiff without probable cause and in violation of her First and Fourth Amendment rights.

105. The actions of Defendant DOE 1, in participating in the investigation and consulting with the other individual defendants prior to Plaintiff's arrest, set in motion a series of acts which Defendant DOE 1 knew or reasonably should have

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1 known would cause others to inflict constitutional injury, and therefore incurs
2 supervisory liability. See Graves v. City of Coeur D'Alene, 339 F.3d 828, 848 (9th
3 Cir. 2003).

4
5 106. On information and belief, Defendant DOE 1 personally authorized the arrest
6 of Plaintiff despite the lack of probable cause to do so, which was in violation of
7 Plaintiff's rights, or otherwise purposefully acquiesced to the same despite the
8 established constitutional rights of Plaintiff, which were known or should have been
9 known to the police officer defendants – including in particular DOE 1 as a
10 supervisor – at the time of Plaintiff's arrest.

11
12
13 107. Because Defendant DOE 1 was at the scene of the investigation, met with Plaintiff,
14 conferred with the other defendant officers, and played a direct and causal role in the
15 constitutional violation, Defendant DOE 1 is liable for the constitutional deprivations that
16 Plaintiff experienced. See Jeffers v. Gomez, 267 F.3d 895, 915 (9th Cir. 2001).

17
18
19 108. Both Defendants made false representations to the Court that were knowing, intentional,
20 and in reckless disregard of the truth and Plaintiff's civil rights.

21
22 109. As a result of the above-described misconduct, Plaintiff suffered severe emotional pain
23 and psychological injury, physical injuries, and economic losses in the form of costs incurred,
24 all of which are subject to proof at trial.

25
26 110. Defendant DOE 1, who worked for Defendant CITY OF BURBANK in his
27 capacity as a supervisory officer for the BPD, deliberately engaged in corruption,
28

1 disregard of established law, and willful violation of Plaintiff's constitutional rights.

2 As such, and by the nature of their conduct, Defendant DOE 1 is not entitled to
3
4 qualified immunity.

5 111. Because the actions of Defendant DOE 1 shocks the conscience of reasonable
6
7 individuals and constitutes a reckless and willful abuse of power, punitive damages
8 are sought against Defendant DOE 1 according to proof.

9 **FOURTH CAUSE OF ACTION**

10 **Violation of Civil Rights Under 42 U.S.C. § 1983 – Monell Claim**

11 **Against Defendant CITY OF BURBANK, by and through the BPD**

12 112. Plaintiffs hereby incorporate the preceding paragraphs as though fully set forth
13
14 herein.

15 113. Defendant CITY OF BURBANK, by and through the individual policymakers
16
17 and/or supervisory officials improperly, inadequately, or with deliberate indifference
18
19 to the constitutional rights of persons, grossly negligently, or with reckless disregard
20
21 for constitutional rights, failed to properly train, supervise, retrain, monitor, or take
22
23 corrective action with respect to individual employees under their supervision and
24
25 control, including in particular but not necessarily limited to Defendants
26
27 MIRAKYAN, CAITO, DOE 1, and others with respect to the types of wrongful
28
conduct alleged in this complaint, including, but not limited to the failure to enforce
the law of the State of California, the unconstitutional enforcement of local

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ordinances and statutes, the enforcement of unconstitutional ordinances and statutes, and misuse of actual or perceived authority against individuals such as Plaintiff such that each one of them is liable legally for all injuries and/or damages sustained by Plaintiff pursuant to the legal principles set forth in Monell v. Dept. of Social Services of the City of New York, 436 U.S. 658 (1978), Heller v. Bushey, 759 F.2d 1371 (9th Cir. 1986), cert. granted and reversed on other grounds sub nom. City of Los Angeles v. Heller, 106 S.Ct. 1573 (1986), and Larez v. Gates, 946 F.2d 630 (9th Cir. 1991), the content of all of which is incorporated herein by this reference.

114. The following policies, customs, and practices of Defendants were in effect at the time of Plaintiff's arrest, which had the natural and foreseeable result of violating Plaintiff's established constitutional rights:

- a. Arresting individuals despite explicitly confirming that they are not engaged in criminal activity;
- b. Using Cal. Pen. Code § 415, as well as potentially other criminal statutes, as a cover to justify arrests that lack probable cause;
- c. Arresting individuals solely based on the fact that another individual expresses a desire to engage in a "citizen's arrest" without any legal justification, rather than engaging in an independent investigation pursuant to police training and procedures;

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- d. Arresting suspects based on fear of complaints or other repercussions from individuals that threaten to engage in a “citizen’s arrest” despite no probable cause for such an arrest under established constitutional principles; and
- e. Refusing to interview witnesses who’s statements would likely conflict with a predetermined decision to arrest a suspect despite a lack of probable cause.

115. Defendant CITY OF BURBANK owed a duty to Plaintiff and others at all times to establish, implement, and follow policies, procedures, customs, and/or practices which confirm and provide for the protections guaranteed them under the United States Constitution, including the 1st, 4th, and 14th Amendments; to use reasonable care to select, supervise, train, control, and review the actions of all of their agents, officers, and employees.

116. Instead, Defendants engaged in the above-described policies, practices, and customs, all of which is not unique to Plaintiff alone or constitutes an isolated incident, but is in fact a pervasive policy, practice, and custom of which Defendant CITY OF BURBANK, by and through its various supervisors and policymakers, are aware.

117. The injuries suffered by Plaintiff as described elsewhere herein, were directly, proximately, and foreseeably caused in part by the unconstitutional practices, policies, or customs, both written and unwritten, that at all relevant times were in full

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1 force and effect by Defendants and their employees, which were put in place or
 2 otherwise allowed to remain in place due to the tacit agreement of Defendants,
 3
 4 various supervisors, managers, and policymakers, and was further exacerbated by
 5 their refusal to properly investigate such misconduct of other individuals under their
 6 supervision and authority, or discipline the same.
 7

8 118. Defendant CITY OF BURBANK, by and through its various supervisors and
 9 policymakers, knew, or should have known, that by breaching the aforesaid duties
 10 and obligations that it was foreseeable that it would cause Plaintiff and others to be
 11 injured and damaged by the wrongful acts and omissions as alleged herein, that such
 12 breaches occurred in contravention of public policy and as to their respective legal
 13 duties and obligations to individuals within their jurisdiction.
 14

15 119. The aforementioned policies, practices, customs, and procedures, as well as the
 16 lack of adequate training and discipline as stated and shown above, were the moving
 17 force and/or substantial factor in bringing about the constitutional deprivations
 18 complained of by Plaintiffs herein.
 19
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WHEREFORE, PLAINTIFFS respectfully pray and seek the following relief as to the Causes of Action stated above:

1. For general damages according to proof at trial on each cause of action for which such damages are available,
2. For special damages according to proof on each cause of action for which such damages are available;
3. For punitive damages according to proof at trial on each cause of action for which such damages are available;
4. For reasonable attorney fees and costs of suit, as allowed under the law;
5. For such other relief as the Court deems proper and just.

LAW OFFICES OF VINCENT W. DAVIS & ASSOCIATES

Date: May 2, 2017

BY: /S/ Daniel C. Sharpe, Esq.
Vincent W. Davis, Esq.
Daniel C. Sharpe, Esq.

JURY DEMAND

Plaintiffs hereby demand a trial by jury in this lawsuit.

LAW OFFICES OF VINCENT W. DAVIS & ASSOCIATES

Date: May 2, 2017

BY: /S/ Daniel C. Sharpe, Esq.
Vincent W. Davis, Esq.
Daniel C. Sharpe, Esq.